

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ALLSTATE INSURANCE COMPANY,)	CIVIL NO. 09-00217 SOM/KSC
)	
Plaintiff,)	
)	ORDER DENYING MOTION FOR
vs.)	RECONSIDERATION OF
)	ORDER ADOPTING REPORT OF
RICHARD D. LEONG,)	SPECIAL MASTER (DOC. NO. 50)
individually and as trustee)	
of the Richard D. Leong)	
Revocable Trust; and ELEANOR)	
LEONG, individually and as)	
trustee of the Eleanor Leong)	
Revocable Trust,)	
)	
Defendants)	
)	

ORDER DENYING MOTION FOR RECONSIDERATION OF
ORDER ADOPTING REPORT OF SPECIAL MASTER (DOC. NO. 50)

Allstate Insurance Company seeks reconsideration of this court's Order Adopting Report of Special Master (Aug. 13, 2010). Allstate claims that the Hawaii Supreme Court, in Allstate Insurance Company v. AIG Hawaii Insurance Company, 118 Haw. 174, 186 P.3d 609 (2008), expressly ruled that, unless a court orders an insurance carrier to "pay benefits" under a policy, attorneys' fees and costs may not be awarded under section 431:10-242 of the Hawaii Revised Statutes. The only difference between this argument and the argument made earlier is the citation of this additional case.

Other than citing an additional case, Allstate does not address this court's ruling that, in ordering Allstate to defend

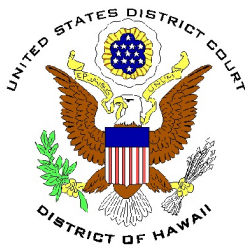
the Leongs, this court ordered Allstate to pay benefits under the applicable insurance policy within the meaning of section 431:10-242. Allstate cites no case specifically indicating that the Hawaii Supreme Court has overruled or otherwise questioned the precedential value of Commerce & Indus. Ins. Co. v. Bank of Hawaii, 73 Haw. 322, 329, 832 P.2d 733, 737 (1992), which held that, when an insurer contests its duty to provide a defense of a suit and the court orders the insurer to pay the costs of the defense, the insured is entitled to reasonable attorneys' fees and costs under section 431:10-242. Allstate Insurance Company v. AIG Hawaii Insurance Company, 118 Haw. 174, 186 P.3d 609 (2008), does not expressly overrule Commerce & Industry Insurance Company.

Although the duty to defend was at issue in Allstate Insurance Company v. AIG Hawaii Insurance Company, the circuit court in that case merely ruled that exclusions in insurance policies were inapplicable and that coverage was afforded under the policies. Without much discussion, the Hawaii Supreme Court concluded that the circuit court's ruling was insufficient to qualify as an order requiring the payment of benefits under a policy. See id. Because this court ordered Allstate to defend the Leongs, thereby going beyond a mere statement that insurance coverage exists, Allstate Insurance Company v. AIG Hawaii

Insurance Company is distinguishable on its facts. Allstate's motion for reconsideration is therefore denied.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 25, 2010.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Allstate Ins. Co. v. Leong, et al., CIVIL NO. 09-00217 SOM/KSC; ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER ADOPTING REPORT OF SPECIAL MASTER (DOC. NO. 50)